

<b>APPLICATION BY</b>	§	<b>BEFORE THE</b>
	§	
<b>INVISTA S.a.r.l.</b>	§	<b>TEXAS COMMISSION ON</b>
<b>RENEWAL OF AIR QUALITY</b>	§	
<b>PERMIT NUMBER 809</b>	§	<b>ENVIRONMENTAL</b>
<b>Nitric Acid Plant, Victoria</b>	§	
<b>Victoria County</b>	§	<b>QUALITY</b>

## **EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST**

### **I. INTRODUCTION**

The Executive Director of the Texas Commission on Environmental Quality (The Commission or TCEQ) files this response (Response) to a request for contested case hearing, filed by persons listed herein.

### **II. APPLICATION REQUEST AND BACKGROUND INFORMATION**

On March 7, 2003, E.I. DuPont De Nemours and Company, Inc. submitted an application for a renewal of air quality permit number 809 for the continued operation of a nitric acid unit at the Victoria plant in Victoria County, Texas. Thereafter, the Victoria plant, which includes the nitric acid unit subject to this renewal, was sold to current owner/operator INVISTA S.a.r.l. (INVISTA or Applicant). The nitric acid unit produces nitric acid by oxidizing ammonia to nitric oxide and then directing the nitric oxide through a water scrubber. If approved, the renewed permit will authorize 4419.95 tons per year (tpy) of nitrous oxide (N<sub>2</sub>O), 36.9 tpy of ammonia (NH<sub>3</sub>), 114.7 tpy of total oxides of nitrogen (NO<sub>x</sub>), 5.15 tpy of carbon monoxide (CO), 0.02 tpy of sulfur dioxide (SO<sub>2</sub>), 6.55 tpy of volatile organic compounds (VOC), and 1.79 tpy of nitric acid (HNO<sub>3</sub>).

TCEQ received this permit renewal application on March 7, 2003. The Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) for this permit application was initially published on June 18, 2003, in the *Victoria Advocate* and on August 13, 2003, in *Revista de Victoria*. The TCEQ received comments and a hearing request from W. Todd Hoeffner, of the law firm Hoeffner & Bilek, submitted on behalf of twenty-two individuals. This hearing request is discussed more fully in Section III below.

After purchase of the nitric acid plant by INVISTA, but prior to completion of the technical review, the Executive Director agreed to hold active review of this renewal for six months to allow the applicant to complete environmental audits of its newly acquired facilities at the Victoria complex. During technical review of this application, it was determined that the renewal could not be processed without a companion amendment to authorize certain ongoing emissions, primarily nitrous oxide (N<sub>2</sub>O). INVISTA applied for such an amendment on December 30, 2005. Public notice was

published on February 8, 2006. No comments were received. During pendency of the N<sub>2</sub>O permit amendment, commission rules were changed effective in 2006, to require authorization of existing planned maintenance, startup and shutdown (MSS) emissions. On January 7, 2008 INVISTA applied to amend permit No. 809 to authorize planned MSS emissions from the nitric acid plant. Public notice was published on March 20, 2008. No comments were received as a result of this notice on the MSS amendment. After technical review and modeling audits were completed to the satisfaction of TCEQ, the N<sub>2</sub>O and MSS amendments were issued concurrently on January 31, 2011.

Due to a change in commission policy, and the change in ownership of the Victoria plant, INVISTA was required to re-publish notice of the renewal to indicate INVISTA as new owner of the nitric acid unit, and to include notice of the 2005 and 2008 amendment applications to permit number 809. An amended Notice of Receipt and Intent to Obtain an Air Quality Permit for this permit renewal application was published in the *Victoria Advocate* that included notification of the amendments to incorporate the N<sub>2</sub>O and MSS emissions. After issuance of the amendments in January 2011, TCEQ directed INVISTA to publish notice of the Executive Director's preliminary decision to issue the renewal as amended. Notice was published in the *Victoria Advocate* on April 28, 2011. The applicable comment period ended on May 28, 2011. No additional comments or hearing requests were received. The Executive Director prepared a Response to Comment (RTC) which was filed with the Office of Chief Clerk on February 27, 2012.

### **III. ANALYSIS OF HEARING REQUEST**

The TCEQ received one timely hearing request from W. Todd Hoeffner, representing the following persons: Cynthia Brookhouser, H.D. Campbell, Barbara Chambers, Brandon Haskell Cook, Thomas Davidson, Johnny Denning, Sharon Harper, Robert and Diane Howell, Douglas Lawrence, Asa and Marilyn Logan, Marvin Patterson, Anton and Joanne Piegsa, Carmine Schifano, Arlene Schultz, Vernon Singleton, H.E. and Dianna Stevenson, Georgia Vega, and Forrest Volkert. The hearing request substantially complied with the form requirements of 30 Texas Administrative Code (TAC) § 55.201(d). According to the request, the twenty-two individuals claim to reside within one to one and a half miles of the INVISTA Victoria plant.

This renewal would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The proposed renewal would include the same emission levels previously authorized under the initial permit as amended in 2011. During pendency of this renewal application, INVISTA requested, and TCEQ agreed, that certain existing emissions must be authorized after a control technology review before this renewal could be issued. These existing air contaminants were primarily nitrous oxide (N<sub>2</sub>O). INVISTA applied for such an amendment on December 30, 2005. As part of the amendment three permits by rule (PBR) were consolidated into the amendment permit number 809. During review, TCEQ adopted 30 TAC § 101.222(h) effective in 2006 requiring INVISTA to authorize planned

maintenance, start-up and shut-down emissions (MSS). In accordance with the new rule, INVISTA applied for an amendment to permit number 809 to authorize planned MSS at the nitric acid unit. No new construction was or is planned under these amendments; no new air contaminants are emitted as a result of these amendments. After proper public notice and comment period, the 2005 and 2008 amendments were issued in January 2011. TCEQ required INVISTA to publish an amended newspaper notice of receipt of the renewal application. After issuance of the amendments, INVISTA published notice of application and preliminary decision to issue the renewal, as it was amended, on April 28, 2012.

Section 382.056(g) of the Texas Clean air Act (Tex. Health and Safety Code, Chapter 382) states in part, "The commission may not seek further comment or hold a public hearing ... in response to a request for a public hearing on an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted." As mentioned above, INVISTA's renewal is not increasing the allowable quantity or authorizing newly emitted contaminants.

Section 382.056(o) of the Texas Clean Air Act does allow the TCEQ to hold a hearing on a permit renewal "... if the commission determines that the application involves a facility for which the applicants' compliance history is classified as unsatisfactory according to commission standards under Sections 5.753 and 7.754, Water Code, and rules adopted and procedures developed under those sections." INVISTA has a compliance history rating of 9.80 for the site, and a company rating of 10.53, both of which are classified as satisfactory.

Consideration of hearing requests on a 'no increase' renewal application is governed by § 382.056(g) and (o) and, as a matter of law, the hearing request must be denied. This response therefore does not include a discussion of 30 TAC § 55.209(e), which lists elements that responses to hearing requests should address, in cases which a "no increase" renewal application is not at issue.

#### IV. CONCLUSION

The renewal of this permit would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. Under these circumstances, § 382.056(g) directs the commission to "... not seek further public comment or hold a public hearing ... ." Accordingly, the Executive Director respectfully recommends that the Commission deny the hearing request and approve the renewal of INVISTA's permit.

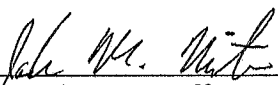
Respectfully submitted,

TEXAS COMMISSION ON ENVIRONMENTAL  
QUALITY

Zak Covar  
Executive Director

Caroline Sweeney, Deputy Director  
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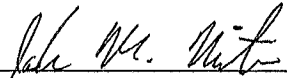
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REPRESENTING THE EXECUTIVE DIRECTOR OF  
THE TEXAS COMMISSION ON ENVIRONMENTAL  
QUALITY

## **CERTIFICATE OF SERVICE**

I certify that on the 19th day of October, 2012, a true and correct copy of this document was served on the parties listed on the attached mailing list by facsimile transmission, hand-delivery, or by deposit in the First-Class U.S. Mail, Postage Prepaid.

A handwritten signature in cursive script, reading "John M. Minter", is written over a horizontal line.

John M. Minter, Staff Attorney

Environmental Law Division

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